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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
Federal Communications Commission
Office of Secretary

OCT - 4 1996

In the Matter of)

Interconnection and Resale Obligations)
Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

To: The Commission

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COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), pursuant to Section 1.415 of the Commission's Rules¹ and in response to the Commission's Second Report and Order and Third Notice of Proposed Rulemaking, ("Third NPRM")² hereby submits its comments on the issues raised therein. RCA reiterates its position that the market, rather than regulation, should govern automatic roaming arrangements. To the extent, however, that the public interest clearly requires the establishment of automatic roaming policies for Commercial Mobile Radio Service ("CMRS") providers, the Commission must ensure that its regulations are sufficiently flexible to address the varying characteristics of market areas. In support thereof, RCA shows the following:

RCA is an association representing the interests of small and rural cellular licensees providing commercial services to subscribers throughout the nation. Its member companies provide cellular service to predominantly rural areas where more than 6

^{1/} 47 C.F.R. § 1.415.

^{2/} FCC 96-284, (rel. August 15, 1996).

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million people reside. Accordingly, RCA member companies will be affected directly by the outcome of this proceeding.

I. Background

In response to the Second Notice of Proposed Rule Making in this docket,³ RCA submitted comments⁴ on the subject of automatic roaming,⁵ noting its agreement with the Commission's conclusion that no regulatory action was required at that time.⁶ RCA's position was based on its observation that the increase in the number of service providers will likely stimulate the availability and variety of roaming arrangements among carriers.⁷

The Third NPRM notes, however, that while most other commenters also supported the Commission's tentative decision to "leave roaming to market forces while monitoring its progress,"⁸ the award of Personal Communications Service ("PCS") licenses apparently has resulted in the evolution of some parties' views on the matter.⁹ The Commission therefore issued this Third NPRM to

³/ Second Notice of Proposed Rule Making, CC Docket No. 94-54, FCC 95-149 (rel. April 20, 1995).

⁴/ See Comments of the Rural Cellular Association, filed June 14, 1995 ("1995 Comments").

⁵/ "Automatic roaming" contemplates an agreement between carriers whereby the serving carrier routinely provides access to its system to the other party's subscribers without requiring the subscriber to take any action other than to turn on his or her phone. Third NPRM at para. 6.

⁶/ 1995 Comments at 7.

⁷/ Id.

⁸/ Third NPRM at para. 15.

⁹/ Id. at para. 16.

explore further the matter of automatic roaming, seeking comment on the need for Commission action, and, if action is required, its nature and cost.¹⁰ RCA submits that no regulatory action is required because there is no evidence or indication of anti-competitive activity. RCA also suggests that regulatory action to implement automatic roaming, even if instituted for an interim period,¹¹ may distort the development of the competitive market. Consequently, any regulations deemed necessary must be specific in nature and limited in scope.

II. There is no need for automatic roaming regulations.

Automatic roaming capability is attractive because it contributes to the competitive nature of a carrier's service offerings. Carriers develop and market the total geographic area within which a subscriber can automatically originate and terminate calls as a distinguishing service characteristic. Consequently, negotiated roaming arrangements may yield a product which is a more attractive to a given prospective customer.

This expanded service area may not, however, be vital or even appealing to every customer and, consequently, may not provide a significant marketing advantage to a carrier in every situation. Furthermore, the expanse of the area within which a customer may desire roaming will vary; nationwide roaming capability is not

¹⁰/ Id. at para. 18.

¹¹/ The Commission tentatively concludes that any action it takes regarding automatic roaming should sunset five years after award of the last group of initial broadband PCS licenses. Third NPRM at para. 32.

demand by every subscriber. Consequently, the value of automatic roaming capability will vary according to each carrier's evaluation of its subscriber base.

While the requesting carrier may benefit from a negotiated roaming arrangement by virtue of the fact that demand for an increased service area is satisfied in an efficient manner, the carrier which allows roaming on its network also profits. Because a significant revenue stream can result from roamers' use of a carrier's network, mutual benefit is derived from the contractual relationship.

The Commission itself notes¹² that there is no indication that PCS licensees will be competitively disadvantaged when seeking roaming arrangements. Objectively, PCS licensees will enjoy a growing pool of available roaming partners, thus increasing their opportunity to reach roaming agreements. The Commission also notes that PCS licensees enjoy a broader geographic license area, reducing the importance of roaming capability to compete in the market.¹³ There is no evidence that negotiated roaming agreements will not be reached.

RCA agrees with Commissioner Chong's observation that the successful development of the cellular roaming arrangements demonstrates that regulatory oversight is not necessary at this

¹²/ Third NPRM at para. 20; Separate Statement of Commissioner Rachelle B. Chong.

¹³/ Third NPRM at para. 19.

time.¹⁴ Since voluntary negotiations have been proven effective and efficient, there is no need to devise a regulatory substitute.

III. Any regulation of roaming arrangements must be narrowly tailored to address specific concerns.

If the record in this proceeding provides clear evidence of specific anti-competitive conduct, the Commission should seek to rectify this behavior through a narrowly-tailored response which produces minimal disruption to the market. Wholesale application of generalized roaming requirements is inappropriate because it would tend to distort carriers' ability to differentiate their services, resulting in decreased competitive ability. RCA submits that the public interest is served where maximum choice is available to consumers. This can occur only where each carrier remains free, to the maximum extent possible, to negotiate the agreements which best reflect individual business judgment and the requirements of the unique marketplace within which each operator exists.

Where a specific regulatory response is proven necessary in the context of roaming arrangements, it is also crucial that the Commission implement its recognition that "all carriers are not similarly situated."¹⁵ Small and rural CMRS carriers cannot, by definition, exercise the degree of market power that larger, more geographically diverse carriers may possess. Consequently, the Commission should also consider whether its narrowly-tailored

¹⁴/ Id.

¹⁵/ Third NPRM at para. 22, citing 1995 Comments at 7-8.

regulatory response to a defined problem also is appropriate in the context of the economic characteristics of the carrier, its licensed area, and the larger economic market within which it operates.

IV. Conclusion

RCA submits that voluntary negotiation should be allowed to achieve roaming arrangements unless there exists clear evidence of anti-competitive activity. If such activity exists, corrective action must be both narrowly-tailored and narrowly-focused to avoid undue market disruption.

Respectfully submitted,

THE RURAL CELLULAR ASSOCIATION

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